

AUG 12 2020

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U.S. DISTRICT COURT
EASTERN DISTRICT OF MO
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U.S. District Court
Eastern District of MO

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

4:20CV1059 NAB

WILLIAM W. MILLSAPS, an individual, for
and on behalf of himself and his minor child,
SM (14)

VERIFIED COMPLAINT FOR
DECLARATORY RELIEF

Plaintiff

vs.

HON. VIRGINIA W. LAY, in Official
Capacity, and MARIE BARNETT MILLSAPS,
an individual

Defendants

COMPLAINT

COME NOW Plaintiff, WILLIAM W. MILLSAPS ("Father" or "Plaintiff"), for and on
behalf of himself and his minor child, SM (age 13) ("SM" or "Child"; Father and Child are
collectively referred to as "Plaintiff") and for the claims state:

PRELIMINARY STATEMENT

1. This action is, *inter alia*, for declaratory and injunctive relief brought pursuant the
First, Fourth, Eighth, Thirteenth and Fourteenth Amendments of the United States Constitution,

the Civil Rights Act of 1871, as codified at 42 U.S.C. § 1983 (the “Civil Rights Act”), 42 U.S.C. § 1985, and the Americans with Disabilities Act of 1990, as codified at 42 U.S.C. § 12101 et seq. (the “ADA”) against the Honorable Virginia W. Lay (“Lay” or the “Official”).

2. No claims are made in this Complaint against Marie Barnett Millsaps (“Barnett” or “Ex-Wife”). She is named as a Defendant solely because she is a “required party” under Rule 19(a)(1) of the Federal Rules of Civil Procedure (“FRCP”).

JURISDICTION AND VENUE

3. Plaintiffs brings this action pursuant to 42 U.S.C. §1983 for violations of civil rights under the First, Fourth, Eighth, Thirteenth, and Fourteenth Amendments to the United States Constitution (the “Constitution”) and the ADA.

4. This Court has subject matter jurisdiction because this case presents a federal question within this Court’s jurisdiction under Article III, § 2 of the Constitution and 28 U.S.C. §§ 1331 and 1343.

5. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (f).

SHORT SUMMARY OF CLAIMS PER FRCP RULE 8(a)(2)

7. The Official violated the fundamental civil rights of Plaintiff by refusing to provide any forum and due process for modification of child custody and child support to be considered. The Official violated the civil rights of Child by maliciously, unlawfully refusing to allow the

Child to be represented before the Official. The Official violated the Father's civil rights by refusing to allow any forum for a modification of child support. Father is a diabetic and has health problems, having been previously deemed disabled within the meaning of the ADA. The Covid-19 crisis has crashed the U.S. economy and made changes to our society not seen in our lifetimes. Yet, the Official refused to hold a hearing on medical evidence, the ability to earn income, and the impossible burden of \$500,000 in Federal student loan debt (not dischargeable in bankruptcy) that the court has also demanded that Father pay. Notwithstanding all of the facts that could be presented – the Official unlawfully refuses to allow a hearing. The Official will not even appoint a guardian ad litem (“GAL”) to represent the interest of the Child. The foregoing is a violation of due process and an egregious violation of the Plaintiff's fundamental rights to child-parent relationship and to property.

COUNT I

DECLARATORY RELIEF AS TO RIGHT OF PLAINTIFF FOR CHILD TO BE REPRESENTED AND HEARD

8. Plaintiff restates, adopts and incorporates by reference, as if set out fully and completely in this Count, the statements of each and every allegation of the preceding paragraphs.

9. Plaintiff asks for declaratory judgement that Child has a right to be represented at a hearing on the merits of whether a modification of custody is appropriate.

10. The parent-child relationship has been recognized under the Constitution as a fundamental right.

11. It is a violation of due process for both Father and Child that the Official refuses to appoint a GAL in considering whether it may be in the best interest of the Child to have a modification of custody.

WHEREFORE, Plaintiffs respectfully requests that the Court enter judgment in their favor and against Defendants, and award the following relief: declare that Missouri statutes permit a new trial or other procedure to present new evidence.

COUNT II

REQUEST FOR DECLARATORY RELIEF – RIGHT TO DUE PROCESS ON FUTURE, ONGOING CHILD SUPPORT

12. Plaintiff restates, adopts and incorporates by reference, as if set out fully and completely in this Count, the following statements of each and every allegation of the preceding paragraphs.

13. Child support obligations ordered by courts are a taking of property.

14. The taking of property by the Official, which is the representative of the applicable state government is subject to strict scrutiny because the taking of property involves Father's fundamental right.

15. Defendant violates Plaintiff Father's fundamental rights to property and due process by refusing to have a fair hearing on the ability of Father to pay.

16. Across the United States, parents are losing income, losing jobs, and having health and economic challenges due to the Coronavirus pandemic.

17. State courts and judges across the country are responsibly and Constitutionally providing a forum to parents to present evidence of ability to pay and to seek modification of duties to pay.

18. The Official has violated the due process and fundamental rights of Father by refusing to provide any due process to Father with regard to the state ordered forfeiture of property, i.e. income of Father.

19. As a result of the unconstitutional seizure, the Defendant compounds already draconian requirements on Father.


20. Because the civil rights violation is, *inter alia*, a fundamental rights issue, the Officials action does not pass strict scrutiny.

21. The Official cannot Constitutionally continue to order the taking property (income) that Father does not have – and which he cannot produce due to, *inter alia*, the Coronavirus damaged to the economy and the Father's health issues. Yet, this is what Official is doing by ordering that there can be no redress for Father.

22. WHEREFORE, Plaintiffs respectfully requests that the Court enter judgment in their favor and against Defendant, and award the following relief: declare that (a) Plaintiff have a fundamental right for Child to be represented before deciding on any custody issue, and (b) Plaintiff Father have a right to process for demonstrating the need for a modification of the amount of future child support obligations.

I declare that that the foregoing is true and correct on information and belief to the best of my knowledge.

Respectfully submitted,

By: 

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Plaintiff

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